

RESOLUTION NO. 2019-27

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE
VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A
REVOCABLE LICENSE AGREEMENT WITH PADL LLC
FOR A PADDLEBOARD SHARING PROGRAM;
PROVIDING FOR AUTHORIZATION; AND PROVIDING
FOR AN EFFECTIVE DATE.**

WHEREAS, the Village of Key Biscayne (the “Village”) desires to provides its residents with the ability to rent paddleboards at the Village’s Beach Park located at 695 Ocean Drive, Key Biscayne, Florida (“Beach Park”); and

WHEREAS, PADL LLC (“PADL”) is a paddleboard sharing provider and has proposed to operate a paddleboard sharing program (the “Program”) at the Village’s Beach Park; and

WHEREAS, the Village and PADL desire to enter into a Revocable License Agreement, in substantially the form attached hereto as Exhibit “A,” (the “Agreement”) for PADL to offer the Program; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Approval.** That the Village Council approves the Agreement with PADL in substantially the form attached hereto as Exhibit “A.”

Section 3. **Authorization.** That the Village Manager is hereby authorized to execute the Agreement attached hereto as Exhibit “A,” subject to approval by the Village Attorney as to form, content, and legal sufficiency.


Section 4. **Effective Date.** That this Resolution shall be effective immediately upon adoption.


PASSED and ADOPTED this 21st day of May, 2019.

ATTEST:



JENNIFER MEDINA, CMC
VILLAGE CLERK



MICHAEL W. DAVEY, MAYOR


APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



VILLAGE ATTORNEY

**REVOCABLE LICENSE AGREEMENT
BETWEEN
THE VILLAGE OF KEY BISCAYNE
AND
PADL LLC**

THIS REVOCABLE LICENSE AGREEMENT (this "Agreement") is made effective as of the _____ day of _____, 2019 (the "Effective Date"), by and between the VILLAGE OF KEY BISCAYNE, FLORIDA, a Florida municipal corporation, whose principal address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (the "Village"), and PADL LLC ("PADL"), a Florida limited liability company, whose principal address is 478 Bay Lane, Key Biscayne, Florida 33149. The Village and PADL are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties."

RECITALS

1. The Village is the owner of a parcel of real property located at 695 Ocean Drive, Key Biscayne, Florida ("Beach Park") with Folio Number 24-5204-002-0092.
2. PADL is a paddleboard sharing provider and proposes to operate a paddleboard sharing program at the Village's Beach Park.
3. PADL requests the use of the designated use area described in **Attachment A** (the "Property") at the Beach Park to efficiently and effectively provide paddleboard sharing services.
4. PADL possesses GPS, 3G, and self-locking technology in its paddleboard fleet such that paddleboards may be locked and opened by users with an app and tracked to provide for operations and maintenance.
5. The limited use of the Beach Park, in accordance with the terms of this Agreement, for paddleboard sharing is a benefit to Village residents.
6. The Village's intent is to grant PADL a revocable license of the Property.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties as set forth in this Agreement, and other valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, it is agreed by and between the Parties as follows:

1. Grant of License and Use.

- 1.1. License.** The Village grants to PADL a revocable license for the use of the Property as contemplated herein. This license is personal to PADL and may not be assigned or transferred to any party without the Village's express, written consent.
- 1.2. Use.** The Village authorizes PADL to use only the area of the Beach Park designated on **Attachment A** hereto solely for the purposes set forth in this Agreement. This authorization is not a lease or an easement, and is not intended and shall not be construed to transfer any real property interest in the Beach Park.

- 1.2.1. PADL may use the Property solely for deployment of racked and locked paddleboards owned and maintained by PADL in the paddleboard sharing program for use by Village residents. PADL shall not place or attach any personal property, fixtures, or structures to the Property or at the Beach Park without the prior written consent of the Village.
- 1.2.2. Use of the Beach Park and PADL's operations within the Village, shall, at a minimum: a) not adversely affect the Property, the Beach Park, or any other Village property; b) not adversely affect the property of any third parties; c) not inhibit pedestrian movement within the Property or the Beach Park; d) not create conditions which are a threat to public safety and security; and e) not constitute a nuisance with respect to neighboring residential uses.
- 1.2.3. Upon termination of this Agreement by either Party, PADL shall, at its sole cost and expense, immediately restore the Property to a condition which is visually and structurally indistinguishable from the immediately surrounding area.
- 1.3. **Non-Exclusivity.** The Village designates PADL as a non-exclusive provider of racked and locked paddleboard sharing services (the "Service") at the Property during the Term (as defined herein) of this Agreement. The Village specifically reserves the right to contract with any other entity providing similar services.
- 1.4. **Compliance with Laws.** PADL shall not commit nor permit any violations of applicable federal, state, county and municipal laws, ordinances, resolutions and governmental rules, regulations and orders, as may be in effect now or at any time during the term of this Agreement, all as may be amended, which are applicable to Village, PADL, the Property or the operations conducted at the Property. A violation of any such laws, ordinances, resolutions, rules, regulations or orders, as amended, shall constitute a material breach of this Agreement, and in such event, Village shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.
- 1.5. **Rules and Regulations.** The Village may promulgate and enforce reasonable rules and regulations governing the use of the Property by PADL, and PADL shall provide adequate supervision of the Property at all times it conducts or sanctions activities thereon.
2. **Term.** The term (the "Term") of this Agreement shall commence upon the execution hereof and shall remain in effect for a period of one (1) year from the Effective Date of this Agreement with annual renewals as described below, except as may be sooner terminated in accordance with the terms of this Agreement. Either the Village or PADL shall have the right, in its sole discretion, to terminate this Agreement upon written Notice (as hereinafter defined) to the other party delivered at least thirty (30) days prior to the end of

any annual Term. If no such Notice is given by either party, this Agreement shall automatically renew for one (1) year terms until such time as either party desires to terminate this Agreement as set forth in the preceding sentence. If such Notice is given, this Agreement shall terminate upon the expiration of the then current annual Term, and following the last day of the current annual Term, the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination. This Agreement may be renewed by the Village Manager for up to two (2) additional one (1) year terms. The definition of "Term" shall include all renewal terms hereof.

3. **Termination.** This Agreement may be terminated by the Village with or without cause by providing at least seven (7) days' written notice to PADL of such termination.
4. **License Fee.** The Parties agree that there is no license fee.
5. **Utilities.** PADL shall reimburse the Village on a monthly basis for the actual cost of any utilities and services consumed on the Property during the period of PADL's use of the Property, including, but not limited to, electricity, water and sewer and trash collection.
6. **Condition of Property.**
 - 6.1. The Village makes the Property available to PADL in an "as is" condition. The Village makes no representations or warranties concerning the condition of the Property or its suitability for use by PADL or its customers, and assumes no duty to warn either PADL or its customers concerning conditions that exist now or may arise in the future.
 - 6.2. In making the Property available for use by PADL, the Village assumes no liability for loss or damage to PADL's paddleboards or other property. PADL agrees that the Village is not responsible for providing security at any location where PADL's paddleboards are stored or located, and PADL hereby waives any claim against Village in the event PADL's paddleboards or other property are lost or damaged.
7. **Operations & Maintenance.**
 - 7.1. PADL shall be solely responsible for: (i) maintaining the Property to the Village's standards applicable for use by PADL as permitted under this Agreement; and (ii) obtaining any applicable permits required by the Village, the County, the State, and/or any Federal agencies.
 - 7.2. PADL shall exercise due care in the Property and shall be responsible for maintaining the Property in good condition and repair. PADL shall not act, or fail to act, in any way that results in excessive wear or damage to the Property. PADL expressly agrees to repair, replace, or otherwise restore any part or item of real or personal property that is damaged, lost or destroyed as a result of PADL's use of the Property. Should PADL fail to repair, replace, or otherwise restore such real or personal property, PADL

expressly agrees to pay the Village's costs in making such repairs, replacements, or restorations

- 7.3. PADL shall be responsible for all operations and maintenance of its paddleboard fleet and the Property. PADL will be responsible for responding to any paddleboard maintenance customer service calls.
- 7.4. PADL shall cover all maintenance costs for the paddleboard fleet and docking station.
- 7.5. PADL shall have no more than four (4) deployed paddleboards available for use in the Village at any given time. PADL shall not reduce or increase the amount of deployed paddleboards without the express, written consent of the Village Manager and/or his/her designee.
- 7.6. The Village shall in no way be responsible for maintenance of any paddleboards or docking stations owned or operated by PADL.
- 7.7. The Village shall have final authority over the location of PADL's paddleboard docking station.
- 7.8. PADL's paddleboards are to be confined within the locked docking station designated in Attachment A. PADL may not utilize any other Village property to store paddleboards racks or equipment without the prior, written consent of the Village Manager and/or his/her designee.
- 7.9. PADL shall refresh its fleet within 3 years, by introducing, for example, newer model paddleboards.
- 7.10. PADL shall ensure that PADL's users return paddleboards for further deployment in a manner that does not interfere with or block the Property or the Beach Park. In addition, PADL shall ensure that users do not leave paddleboards unattended on private property.
- 7.11. PADL shall ensure that Village residents and users comply with Section 4-32 of the Village Code of Ordinances and Resolution No. 2005-31, copies of which are attached hereto as **Attachments C and D**, respectively.
- 7.12. PADL shall ensure that its users are restricted to Village residents who have a 33149 zip code.
8. **Ingress and Egress.** PADL, its agents, employees, invitees and guests shall have the non-exclusive right to ingress and egress to the Property during those dates and times mutually agreed upon by the Parties.
9. **Reporting Requirements.** PADL shall provide monthly reports to the Village concerning utilization of its paddleboards, total number of program users, number of uses, and average uses per paddleboard per day. PADL shall cooperate with the Village in the collection and analysis of aggregated data concerning its operations.

10. Liability and Indemnification.

10.1. PADL hereby assumes all financial, administrative and legal responsibility in connection with, related to, or arising out of the use of the Property.

10.2. PADL shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from PADL's performance or non-performance of any provision of this Agreement including, but not limited to, a) liabilities arising from contracts between PADL and third parties made pursuant to this Agreement, and b) claims related to the Dedication Agreement recorded on February 20, 1998 in the Official Records of Miami-Dade County at Book 17988 Page 3453, attached hereto as **Attachment B**. PADL shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from PADL's performance or non-performance of this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the Village of any immunity to which it is entitled by law, including but not limited to the Village's sovereign immunity as set forth in Section 768.28, Florida Statutes.

10.3. The provisions of this section shall survive termination of this Agreement.

11. Insurance. PADL shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of PADL's insurance and shall not contribute to PADL's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section and may be increased by the Village as it deems necessary or prudent.

11.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

11.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of PADL shall be allowed to

provide services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

- 11.3.** Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- 11.4.** Certificate of Insurance. Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services on any Project. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. PADL shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.
- 11.5.** Additional Insured. Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of PADL in performance of this Agreement. PADL's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to PADL's insurance. PADL's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 11.6.** Deductibles. All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. PADL shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

11.7. The provisions of this section shall survive termination of this Agreement.

12. **Independent Contractor; No Joint Venture.** PADL and its employees, contractors, subcontractors, officers, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together in any joint venture or liability company or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this Agreement.
13. **Most Favored Nation.** If during the term of this Agreement, PADL enters into an agreement with another municipality or county ("Other Governmental Entity"), the terms of which agreement include direct or indirect compensation to the Other Governmental Entity, then upon written request of the Village, PADL shall negotiate and enter into a new agreement with the Village which shall include the more favorable compensation terms extended to the Other Governmental Entity. PADL shall notify the Village within 30 days if it enters into an agreement with an Other Governmental Entity that has more favorable terms than this Agreement and the Village shall have the right to receive the more favorable terms immediately.
14. **Entire Agreement; Amendment.** This writing contains the entire Agreement of the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein. This Agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.
15. **Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of the term of this Agreement shall survive termination of this Agreement and shall remain in full force and effect unless and until the terms or conditions are completed.
16. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
17. **Applicable Law; Venue; Waiver of Jury Trial.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT,

EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

18. **Attorneys' Fees.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at trial and any and all appellate levels, including post-judgment proceedings.
19. **Assignment.** PADL shall not assign, transfer, or otherwise dispose of this Agreement, or any portion thereof, or permit the Property to be occupied by other organizations, entities or persons.
20. **No Third Party Beneficiaries.** Neither Party intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.
21. **Counterparts.** This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
22. **Public Records.** PADL understands that the public shall have access, at all reasonable times, to all documents and information pertinent to this Agreement, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Village and the public to all documents subject to disclosure under applicable law. For purposes of this section, the term: (a) "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2); and (b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law. In addition to other contract requirements provided by law, PADL shall comply with public records laws, specifically to: (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of PADL upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. PADL's failure

or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

NOTICE PURSUANT TO
SECTION 119.0701(2)(a), FLORIDA STATUTES

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Jennifer Medina, CMC, Village Clerk

Mailing address: 88 West McIntyre Street, Key Biscayne, FL 33149

Telephone number: 305-365-5506

Email: jmedina@keybiscayne.fl.gov

23. Miscellaneous.

- 23.1.** The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.
- 23.2.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the Parties.
- 23.3.** Both parties agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, in the use of the Property. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of the other party, effective the date of the court order.
- 23.4.** Each party represents and warrants that the representative signing this Agreement on its behalf has all right and authority to bind and commit that Party to the terms and

conditions of this Agreement and that the execution, delivery and performance of this Agreement has been duly authorized by Village and PADL action.

23.5. The Village cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Property or any operations at the Property. Nothing herein shall be deemed to create an affirmative duty of Village to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

24. Notice. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Village: Andrea Agha
 Village Manager
 Village of Key Biscayne
 88 West McIntyre Street
 Key Biscayne, Florida 33149

With a copy to: Chad Friedman, Esq.
 Village Attorney
 Weiss Serota Helfman Cole & Bierman, P.L.
 2525 Ponce de Leon Blvd., Suite 700
 Coral Gables, Florida 33134

For PADL PADL LLC
 Attn: Andres Avello, Registered Agent
 478 Bay Lane
 Key Biscayne, Florida 33149

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

FOR PADL:

**PADL LLC, a Florida Limited
Liability Company
By: FAK Holdings, LLC, a Florida
Limited Liability Company, its sole
Manager¹**

Witness:

Sign: _____

Print: _____

Sign: _____

Print: _____

Sign: _____

Print Name: _____

Title: _____

Date Executed: _____

FOR THE VILLAGE:

**VILLAGE OF KEY BISCAYNE, a
Florida municipal corporation**

Attest:

Jennifer Medina, Village Clerk, CMC

Andrea Agha, Village Manager
Date Executed: _____

Approved as to Form and Legal Sufficiency:

Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

¹ If FAK Holdings, LLC Operating Agreement requires more than one Managers' signature, this Agreement must be executed by all Managers required by the Operating Agreement.